IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7196 OF 2006

Smt. Sunitidevi Singhania
Hospital and Medical Research
Centre .... Petitioner
Vs.
Shramik Sena .... Respondent

Sarvasri C.U. Singh with Ajay Fernandes i/b
M/s. J. Sagar Associates for the Petitioner.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 04, 2006

P.C:

1. Heard. The petitioner challenges the order dated 2-8-2006 passed by the Industrial Tribunal, Thane whereby Exhibit-17 has been dismissed. The Exhibit-17 was an application filed by the petitioner for rejection of the reference on the ground that the same is affected by the principles analogous to res judicata and, therefore, it is not maintainable. It is the contention of the petitioner that the reference is barred in terms of Section 59 of the MRTU & PULP Act, 1971, hereinafter called as "the said Act". It is further contention of the petitioner that the subject-matter referred for adjudication is the closure of the petitioner-hospital establishment by notice dated 31-10-2001 and the same was challenged under the said Act by the Union named Kamgar Utkarsha Sabha representing the employees of the

said undertaking and the said complaint was adjudicated by the Industrial Court, Thane and was finally decided by the order dated 14-6-2005 and that therefore the present reference is fatally affected by the principles analogous to res judicata and therefore not maintainable.

2. The Industrial Tribunal while dismissing the application has observed that there are mixed question of law and facts involved in the matter and those are to be ascertained for appropriate decision regarding the bar under Section 59 of the said Act and the said finding arrived at by the Industrial Tribunal cannot be found fault with in the facts and circumstances of the case. Whether the subject-matter of the present proceedings have been already adjudicated upon and therefore they cannot be reopened in view of the provisions of Section 59 of the said Act cannot be said to be a pure question of law as what was the subject-matter of the earlier proceedings and how it is similar to the subject-matter of the present proceeding can be decided only after placing the necessary materials in that regard on record and the procedure to place such materials on record is by way of recording evidence in that regard. Needless to say that the petitioner-establishment would be entitled to raise preliminary issue in that regard and if so raised,

nothing prevents the Industrial Tribunal to deal with the same in accordance with the provisions of law. However, as the issue is not a pure question of law but it requires the necessary materials on record, which are to be brought on record by following the procedure known to law and which will require recording of evidence, no fault can be found with the impugned order and it does not disclose any jurisdictional error on the part of the Industrial Tribunal which would warrant interference in writ jurisdiction under Article 227 of the Constitution of India.

3. Needless to say that all the observations made by the Industrial Tribunal in the impugned order cannot come in the way of the Industrial Tribunal while deciding the issue regarding the applicability of the provisions of law comprised under Section 59 of the said Act to the proceedings in hand. With these observations, the petition is rejected.

(R.M.S. Khandeparkar, J.)

sjs/124wp7196.6